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ZOOSK, INC.
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 ZOOSK, INC.,

13 Plaintiff,

14 v.

15 DOE 1, aka "Carson Dyle," an individual, and
16 DOES 2-25, individuals,

17 Defendants.
18
19

Case No. 10-cv-04545-LB

**DECLARATION OF JULIO C. AVALOS
IN SUPPORT OF PLAINTIFF ZOOSK,
INC.'S *EX PARTE* APPLICATION FOR
ORDER SHORTENING TIME AND
MOTION FOR LEAVE TO TAKE
EARLY DISCOVERY**

DATE: December 2, 2010
TIME: 1:30 p.m.
CTRM: 4

20 I Julio C. Avalos declare as follows:
21

22 1. I am over 18 years of age and make this Declaration upon personal knowledge of
23 the facts set forth below except as to those matters stated on information belief, and as to those
24 matters, I believe them to be true. If called upon to testify, I could and would testify competently
25 as the matters set forth herein.

26 2. I am an attorney licensed to practice law under the laws of the State of California
27 and am an associate with the law firm of Orrick Herrington & Sutcliffe, attorneys for Plaintiff
28 Zoosk, Inc. ("Zoosk") in the above-captioned matter. This declaration is filed in support of

1 Zoosk's *Ex Parte* Application For Leave To Take Early Discovery as well as its concurrently-
2 filed *Ex Parte* Motion For An Order Shortening Time requesting that its Early Discovery Motion
3 be heard by this Court as soon as the Court's calendar permits.

4 3. Time is of the essence in this case since the identities of the John Doe Defendants
5 that are defaming Zoosk are likely in the possession of third-party Internet Service Providers
6 ("ISPs") Road Runner HoldCo LLC ("Road Runner"), Swiftwill, Inc. ("Swiftwill"), Comcast
7 Cable Communications ("Comcast"), and Rackspace Hosting ("Rackspace") (all four ISPs
8 collectively herein referred to as the "Target ISPs").

9 4. In its complaint, Zoosk alleges that an unknown party or parties have embarked on
10 a campaign to defame Zoosk, to injure its reputation, and to interfere with prospective and
11 existing business prospects and customers.

12 5. The bulk of these defamatory statements have been published on the website
13 www.twitter.com (the "Twitter Website") under the account name "Squirrel Juice."

14 6. Based on publicly available information as well as information received from
15 Twitter, Inc. ("Twitter"), Zoosk researched the identity of the IP addresses being used to publish
16 the defamatory statements on the Twitter Website.

17 7. Zoosk learned that the Squirrel Juice Twitter account, which appears to have been
18 created and used for the sole purpose of publishing defamatory statements about Zoosk, has been
19 accessed by a Doe Defendant or Defendants using eight distinct "IP addresses." An "IP address"
20 is a numerical label that is assigned to any device participating in a computer network that uses
21 the Internet Protocol for communication between nodes, or servers. ISPs assign IP addresses to
22 customers accessing the Internet. Publicly available records, however, typically only allow casual
23 internet researchers to uncover the general geographic location in which an IP address was
24 used/assigned by an ISP. Records relating to the exact physical address or customer to which an
25 IP address was assigned at a particular time are maintained by the ISPs and are not typically
26 available on the Internet.

8. Apart from the information on the Target ISPs' servers, Zoosk does not have any other reasonable means to learn the identity of the persons controlling the IP Addresses accessing the Squirrel Juice Twitter Account.

9. The eight IP addresses that Zoosk has thus far traced back to the Squirrel Juice account include:

- 65.29.326.80, owned by Road Runner HoldCo LLC, 13241 Woodland Park Road, Herndon, Virginia 20171 ("Road Runner");
- 65.29.239.177, owned by Road Runner;
- 24.211.29.41, owned by Road Runner;
- 65.29.244.58, owned by Road Runner;
- 65.29.247.238, owned by Road Runner;
- 64.88.250.140, owned by Swiftmill, Inc., 738 Main Street, PMB 140, Waltham, Massachusetts 02451;
- 67.173.173.186, owned by Comcast Cable Communications, 3 Executive Campus, 5th Floor, Cherry Hill, NJ 08002;
- 174.143.11.196, owned by Rackspace Hosting, 5000 Walzem Road, San Antonio, TX 78218.

10. Zoosk requires discovery on the Target ISPs in order to determine the identity of the users who utilized these IP addresses to access and post defamatory statements to the Squirrel Juice account. Without this information, its case against the Doe Defendants will likely not proceed as Zoosk has no reasonable, alternative means to identify the Doe Defendants.

11. If and when the Court grants Zoosk's instant motion, Zoosk will promptly serve the Target ISPs with the subpoenas attached hereto as Exhibits A through D.

12. Zoosk will promptly amend its complaint to substitute the names of the identified Doe Defendants and take action to serve them once it receives the targeted identifying information.

13. Zoosk anticipates that it will need an additional seven weeks after this Court authorizes the discovery requested in its motion in order to identify and serve the Doe Defendants.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 18th day of October 2010 at Menlo Park, California.

Julio C. Avalos